

EXHIBIT 12

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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AUSTIN FENNER and
IKIMULISA LIVINGSTON,

Plaintiffs,

v.

09 Civ. 9832

(BSJ) (RLE)

NEWS CORPORATION, NYP HOLDINGS,
INC. d/b/a THE NEW YORK POST
and DAN GREENFIELD and
MICHELLE GOTTHELF,

Defendants.

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DEPOSITION OF AUSTIN FENNER

New York, New York

January 11, 2012

Reported by:

MARY F. BOWMAN, RPR, CRR

JOB NO. 45411

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recall any that pertained to NewsCorp. as opposed to the Post?

A. There were so many documents, it was a blizzard of paper. I can't recall right now which ones you are referring to.

Q. I'm not referring to any particular document. My question is, are you aware of having produced any documents to your attorney that pertained to NewsCorp. as opposed to the Post?

MR. THOMPSON: Objection, asked and answered.

A. I gave over all the documents I have.

Q. Did any of them relate to News Corporation?

A. There was a blizzard of documents. There was so many, I can't recall -- for me, it is all the same, it is all one, so I just gave over whatever showed up.

Q. For you, documents relating to the Post and NewsCorp. are the same thing?

A. I was hired by NewsCorp. and the Post.

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Q. So do you recall dealing with anybody at NewsCorporation in connection with your hire?

A. I remember dealing with Amy Scialdone and there were several different people at times who were leading training sessions. This was within the NewsCorporation building. I don't know exactly who the employer was, but I looked at it as one and the same.

Q. Amy Scialdone is human resources for the New York Post, is she not?

A. That's correct.

Q. When you did training, was it in a room or was it an online training?

A. It was at 1211 Avenue of the Americas.

Q. That's where the New York Post's offices are, right?

A. That's correct, inside the NewsCorp. building.

Q. You had an e-mail address at the New York Post, right?

A. Yes.

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Q. Who did you meet with when you were hired from NewsCorp.?

A. I can't recall right now, but I believe the training manuals I viewed might have said NewsCorp. Is that right?

Q. Did you -- who did you interview with?

A. For what?

Q. For your position at the Post?

A. Dan Colarusso.

Q. Dan Colarusso was an editor at the Post, right?

A. That's correct.

Q. Who was his boss?

A. Col Allan.

Q. The editor and chief of the New York Post, right?

A. Correct.

Q. Do you remember dealing with a human resources department?

A. I do.

Q. Was that the New York Post human resources department?

A. I believe it was.

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Q. Was that an e-mail address that said @NewYorkPost.com?

A. That's correct.

Q. And did you have a business card?

A. I did.

Q. Did it say that you worked for the New York Post?

A. That's correct.

Q. Did it say that you worked for NewsCorp.?

A. I believe it said New York Post.

Q. And when you entered your offices on the 10th floor of the building, did it say the New York Post?

A. Yes, when I walked into the NewsCorp. building, I passed through security and took the elevator to the 10th floor to the New York Post offices.

Q. Do you know who paid you? Was it -- were you paid by the New York Post?

A. The check said New York Post, I believe. I would need to see it if you have one.

Q. And you have sent around some

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within Columbia University on those stories?

A. I can't recall right now.

Q. Did your editors assign you stories relating to the Columbia University expansion?

A. No, I pitched a series of stories. One of those stories was about the Cotton Club business, and through our work, through doing great work on that story, we helped this man save his business from the imminent domain issue that was hovering over many of the businesses in Columbia, in the Columbia expansion plan.

Q. How many stories did you pitch relating to the Columbia University expansion?

A. Many.

Q. How many ran?

A. Maybe five. I can't recall the exact number right now.

Q. Do you know how many you pitched?

A. I can't recall the exact number right now.

Q. Were any of your stories turned

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down by the city desk?

A. Yes.

Q. How many?

A. I can't recall the exact number.

Q. Were you ever criticized by your editors for your reporting on the Columbia University expansion?

A. I can't recall right now.

Q. Did your editors tell you that you were not pitching enough stories relating to the Columbia University expansion?

A. I can't recall that right now.

Q. Were there any stories about the Columbia University expansion that were developed by the city desk and assigned to you?

A. I can't recall if -- I can't recall if you're talking about a particular story that they might have assigned. I know I pitched many stories, that was part of my enterprise week.

Q. By -- you were hired in approximately the middle of 2007, right?

A. May 2007.

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Q. May of '07. By May of '08, you had been at the Post about a year, correct?

A. Correct.

Q. And what were your -- what were your reporting duties by May of 2008? In other words, were you in the street most of the time or were you in the office most of the time?

A. I was hired as an enterprise reporter which required me to pitch stories, cover breaking news, and cover out of town assignments for the paper. So it was a mix.

Q. Did that group of responsibilities put you in the street most of the time or in the office? What was the --

MR. THOMPSON: Objection.

Q. -- what was the balance of your time?

A. It was a mix.

Q. Would you agree that about a year, just using about a year in May of 2008, that you were primarily working as a street reporter?

A. No.

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Q. What were you -- what does the term "street reporter" mean to you?

A. You mean someone who is not in the office?

Q. Yes. Is that what you were primarily were by mid '08?

A. Not at all.

Q. You were in the office?

A. I was a senior reporter working at the paper.

Q. Where were you performing your job?

A. I just said it was a mix.

Q. So sometimes you were in the office, sometimes you were out?

A. Sometimes I was in the office, sometimes I was out on breaking news assignments, sometimes I was traveling on behalf of the paper.

Q. Approximately what percentage of your time by May of '08 -- you had been at the Post for one year -- were you in the office?

A. I can't give you a percentage or breakdown right now.

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Q. Was it 10 percent, 20 percent?

MR. THOMPSON: Objection.

A. I think it was a mix. It might have been 33 percent on all -- I was -- it might have been a third on each one. I don't know.

Q. A third in the office, a third on the street in New York, and a third on the road traveling? Is that what you mean by 33 percent each?

A. I don't have an exact mathematical breakdown to give you.

Q. I understand that. By May of 2008, how much of your work was -- what percentage of your work was the work of a street reporter?

A. I couldn't tell you that number.

Q. How much of your work was producing enterprise stories?

A. Like I said, it was a mix. And I can't give you a mathematical breakdown.

Q. What enterprise stories did you produce during the first year of your employment at the Post?

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A. I did several. I did many. I wrote stories about an identity theft story. It was a military burial -- it was a -- it was an identity theft story.

Q. Got it. Identity theft in a military burial?

A. Right.

Q. What else?

A. It was a man who had been convicted of murder in Connecticut who had mistakenly assumed his neighbor had molested his child and I was able to get this man to send a handwritten, handwritten letter about why he did this and what went wrong.

Q. A letter to whom?

A. It was addressed to me at the New York Post.

Q. Can you define an enterprise story?

A. An enterprise story is an story that's off the radar, a story that is original reporting and of interest to the public.

Q. Does it involve more research and more reporting than a nonenterprise story?

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A. It can.

Q. But it is original, off the radar and it is of interest to the public?

A. Those are some of the elements.

Q. Can you think of any other enterprise story that you wrote in your first year at the Post?

A. The Columbia expansion stories, the Wendy Williams story. And there were others.

Q. Can you tell me what the others were?

A. If I had a list, I could refresh my recollection.

Q. Did you ever decline a request to stay late to cover a breaking news story?

A. Did I ever decline a request to stay late?

Q. Yes, to cover a breaking news story?

A. I think you're referring to a story where I had child care issues and I had to pick up my daughter from my mother's house and my wife was out of town.

My mother, at that time, would have

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been about 86. So I think that's what you might be referring to.

Q. So the answer is yes, you did?

A. Can you repeat the question?

Q. Did you ever decline a request to stay late to cover a breaking news story?

A. I had child care issues. I had to -- I called my editors to see if they could send someone to relieve me. So the answer is I never declined a request to stay late, no. The answer is no.

Q. The answer is ---

A. I didn't decline a request. I called in to get relief on a story. I never declined a request to stay late on a story.

Q. And what happened after you made that call?

A. The editors looked to see if there were any other reporters who were starting their shifts and who could relieve me.

Q. Did they find any?

A. I can't recall in this particular one. I would assume that happened.

Q. You did not cover that story?